

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JOSE ESCOBEDO,

Plaintiff,

v.

MARIA GLORIBEL VIDES GUARDADO,
et al.,

Defendants.

Case No. 1:23-cv-00329-SAB

ORDER REQUIRING PLAINTIFF TO
ADDRESS STIPULATION OF DISMISSAL
AS TO NON-APPEARING DEFENDANT

(ECF No. 23)

THREE DAY DEADLINE

On September 6, 2023, a stipulation was filed by the appearing Defendants, dismissing this action with prejudice and with each party to bear its own costs and fees. (ECF No. 23.) One Defendant, Maria Gloribel Vides Guardado Doing business as Mariscos El Patron Mexican Food, has not appeared in this action. The filed stipulation does not specifically state whether the claims against the non-appearing Defendant are to be dismissed with prejudice as well, however, the filing does indicate that the action is to be dismissed in its entirety with prejudice.

Under Rule 41(a)(1)(A)(i) of the Federal Rules of Civil Procedure, ‘a plaintiff has an absolute right to voluntarily dismiss his action prior to service by the defendant of an answer or a motion for summary judgment.’ ” Commercial Space Mgmt. Co., Inc. v. Boeing Co., Inc., 193 F.3d 1074, 1077 (9th Cir. 1999) (quoting Wilson v. City of San Jose, 111 F.3d 688, 692 (9th Cir. 1997)). Federal Rule of Civil Procedure 41(a)(1)(A)(ii) provides that a “plaintiff may dismiss an action without a court order by filing a stipulation of dismissal signed by all parties who have appeared.” Fed. R. Civ. P. 41(a)(1)(A)(ii).

1 The Court shall require Plaintiff to advise the Court as to whether Plaintiff intends to
2 dismiss the claims against the non-appearing party with prejudice as well.

3 Accordingly, IT IS HEREBY ORDERED that, within **three (3) days** of entry of this
4 order, Plaintiff shall submit a notice of dismissal or other filing advising the Court of whether
5 Plaintiff intends to dismiss the claims against the non-appearing Defendant with or without
6 prejudice.

7
8 IT IS SO ORDERED.

9 Dated: **September 7, 2023**


UNITED STATES MAGISTRATE JUDGE